**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 1989 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE J.R.VORA**
**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**STATE OF GUJARAT - Appellant(s)**
**Versus**
**VIJAYBHAI KARAMSHIBHAI PATEL & 1 - Opponent(s)**

==========

**Appearance :**
MR IM PANDYA APP for Appellant(s) : 1,
None for Opponent(s) : 1,
MR KETAN A DAVE for Opponent(s) : 2,

==========

**CORAM : HONOURABLE MR.JUSTICE J.R.VORA**

**and**

**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

**Date : 03/04/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)**

1. The appellant – State has filed this appeal

under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order of acquittal dated 28-2-2005 rendered by the Additional Sessions Judge, Fast Track Court No. 3, Bhavnagar in Sessions Case No. 179 of 2004 acquitting the respondent accused for the offence punishable u/s 406, 420, 489 (A), (B) & (C) and 120-B and 201 read with Section 114 of the I.P. Code.

2. In brief, the prosecution case was that one Laljibhai Haribhai of Nani Vavdi village lodged complaint before Gariyadhar Police Station on 25-3-2002 that when he was at home at about 8-30 p.m. on 24-3-2002 one person came to him to purchase cotton from him saying that he was from Maderdi village; that the person purchased cotton from him and paid Rs.9,600/- in cash in the currency notes of Rs.100/- denomination; that the said person had also purchased cotton from other villagers and paid them in cash in the currency notes of Rs.100/- denomination; that on the next day when one of the seller, Labhubhai Shambhubhai gave currency notes of Rs.2,500/- to Khimabhai Keshubhai, it was found that the currency notes were counterfeit currency notes. Therefore, compliant was lodged before Gariyadhar Police Station.

3. On the basis of the compliant filed by Laljibhai Haribhai, offence was registered as I – CR No.41 of 2002 before Gariyadhdar Police Station for the offence punishable u/s 406, 420, 489 (A), (B) & (c)

and Section 34 of the I.P. Code and investigation was started. During the course of investigation, statement of the witnesses were recorded, panchanama of recovery of currency notes was drawn and the accused were arrested on the basis of information given by co-accused. On completion of investigation, charge sheet was laid before the learned J.M.F.C., Gariyadhar for the offences punishable u/s 406. 420, 489 (A), (B) & (C) and 120-B and 201 of the I.P. Code. As the offence was exclusively triable by the Court of Sessions, it was committed to the Sessions Court, Bhavnagar where it was registered as Sessions Case No. 179 of 2004. The learned Addl. Sessions Judge, Fast Track Court No.3, Bhavnagar framed charge Exh. 4 against the accused. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, prosecution adduced evidence to prove the charge.

4. On completion of recording of the evidence, as no incriminating circumstances were found in the evidence against the accused, further statement of the accused u/s 313 of the Code of Criminal Procedure, 1973 was not recorded.

5. After hearing the learned A.P.P. for the State and learned advocate for the accused, the trial Court found that the prosecution has failed to prove the charge levelled against the accused, and therefore, acquitted the accused for the offences

charged against them. Being aggrieved and dissatisfied by the impugned judgment, State has preferred this appeal.

6. We have heard the learned A.P.P. for the State at length and in great detail. We have also perused the impugned judgment and record and proceedings of the case.

7. It may be recorded that after registration of offence as I – CR No. 41 of 2002 before Gariyadhar Police Station, in course of investigation four accused were arrested, and charge sheet was filed against them. As the offences charged against the accused were triable by Sessions Court, the case was committed to Sessions Court, Bhavnagar and it was registered as Sessions Sessions Case No. 85 of 2002. Thereafter, other accused were also arrested in the same offence and two supplementary charge sheets were filed against them and both the cases were committed to the Sessions Court Bhavnagar and were registered as Sessions Case No.121 of 2002 and 168 of 2003. All the Sessions cases i.e. Sessions Case No. 85 of 2002, 121 of 2002, and 168 of 2003 were tried together. Kalubhai Tapubhai accused in Sessions Case No.85 of 2002 was convicted whereas other accused in all the sessions cases were acquitted. Thereafter charge sheet in the present case was filed.

8. According to the prosecution case, the accused

hatched a criminal conspiracy to prepare counterfeit currency notes and abetted the act by counterfeiting currency notes of denomination of Rs.100/- on the colour zerox machine with the help of other accused and the accused used those counterfeit currency notes as genuine currency notes knowing the same to be counterfeit and were in possession of the counterfeit currency notes of denomination of Rs.100/- intending to use the same as genuine currency notes and with the intention of screening themselves from legal punishment gave false information in respect of the offence.

9. In order to prove the case, the prosecution examined following witnesses :

i. P.W. 1 Kanchanben Bhikhabhai at Exh. 26.

ii. P.W.2 Chimanbhai Sardulbhai Exh. 27.

iii. P.W. 3 Vinodbhai Kanjibhai Exh. 28.

iv. P.W. 4 Sureshbhai Parshotambhai Exh.44

v. P.W. 5 Vikramsinh Harishchandrasinh Exh. 45.

vi. P.W. 6 Bhikhubhai Laxmanbhai Exh, 49.

10. All the witnesses except police witnesses have turned hostile and have not supported the prosecution case. The only witness who supported the prosecution case was P.W. 5 Vikramsinh Harishchandrasinh Exh. 45 who recorded the complaint Exh. 46. The witness admitted in the cross-examination that the name of

the respondents - accused were not disclosed in the complaint.

11. The prosecution produced complaint at Exh. 46. However, it does not disclose the name of the respondents.

12. The prosecution also examined P.S.I., Gariadhar Police Station, P.W. 6 Bhikhubhai Laxmanbhai at Exh. 49. The witness arrested accused Vijaybhai Karamshibhai who was earlier arrested in connection with I – CR No. 113 of 2004 registered at Himatnagar Police Station. The witness also arrested accused Bharatbhai Jilubhai Dhandhal and filed charge sheet. The witness admitted that it was not disclosed during the investigation that accused Vijaybhai Karamshibhai used the counterfeit currency notes for any purchase or that he used the counterfeit currency notes and that he did not recover any material relating to the counterfeit currency notes from Vijaybhai. The witness also admitted that no evidence like printing machine to print counterfeit currency notes or any material relating to the counterfeit currency notes was recovered from accused Bharatbhai Jilubhai Dhandhal.

13. The prosecution examined Investigating Officer P.W. 7 Deshabhai Harjibhai at Exh. 56. The contradictions of the witnesses are proved through this witness. The witness in his evidence admitted

that the respondents accused were not shown as absconding accused in the charge sheet filed earlier. The witness also admitted that no counterfeit currency notes or any other material relating to printing or evidence of use of counterfeit currency notes was recovered from the respondents accused. The witness also admitted that no Test Identification parade was held.

14. In view of above, it becomes clear that no incriminating evidence relating to counterfeit currency notes was recovered from the respondents – accused.

15. The prosecution also produced panchanama of recovery of the counterfeit currency notes at Exh. 30. It appears from Panchanama that the counterfeit currency notes in denomination of Rs.100/- were recovered from certain persons. However, it does not connect the respondents – accused with the offence.

16. The panchanama Exh. 32 is in respect of the counterfeit currency notes produced by witness Biharibhai. However, it does not connect the respondents – accused with the offence. Likewise, other panchanamas Exh.34, Exh.35, Exh. 36, Exh. 37, Exh. 38, Exh. 39 and Exh. 40 also do not implicate the present respondents – accused. Panchanamas Exh. 41 and 42 are in respect of the house and Vadi

(field) of accused Bharatbhai Jilubhai Dhandhal respectively. But no incriminating evidence is found against respondent Bharatbhai from these places.

17. It is a settled principle of law that in an appeal against acquittal the High Court can interfere with the finding recorded by the trial court if it comes to a conclusion that the finding is perverse. The High Court has power to review the evidence upon which the order of acquittal was founded. The order of acquittal can be reversed only for very substantial and compelling reasons. It is also settled principle that where two views are possible one leading to conviction and other to acquittal, the view forming the accused's innocence should be adopted. In view of this settled legal propositions, we are of the view that the finding of acquittal recorded by the trial Court is neither perverse nor unreasonable and it has not resulted into gross injustice. Therefore, no interference is warranted in the impugned judgment.

18. In view of above, there is no evidence on record worth the name implicating the respondents – accused in the offence. Therefore, the learned trial Judge was justified in recording acquittal of the respondents - accused from the charge levelled against them. Therefore, we do not find any merit in this appeal and hence leave to appeal is refused. The appeal stands dismissed.

(J.R. Vora, J.)

(Bankim N. Metha, J.)

/JVSatwara/